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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/771,244  | 02/02/2004  | Steven A. Schneider  |                     | 3614             |
| 7590  | 03/15/2005  |                      | EXAMINER            |                  |
| STEVEN A. SCHNEIDER<br>P.O. BOX 2758<br>SAN RAFAEL, CA 94912-2758 |             |                      | VALENTI, ANDREA M   |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3643                |                  |

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                   |                      |
|------------------------------|-------------------|----------------------|
| <b>Office Action Summary</b> | Application No.   | Applicant(s)         |
|                              | 10/771,244        | SCHNEIDER, STEVEN A. |
|                              | Examiner          | Art Unit             |
|                              | Andrea M. Valenti | 3643                 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 December 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 5 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by German Patent DE 3502296 to Steinbronn.

Regarding Claim 5, Steinbronn teaches an article for burial beneath the root zone of a plant or plants (Steinbronn English title and Fig. 1) comprising a flexible water resistant sheet having a plurality of contiguous concave reservoir basins (Steinbronn Fig. 1 #10) with through holes (Steinbronn Fig. 2 #9) disposed upon the crests of basin walls separating such basins.

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,256,007 to Allen.

Regarding Claim 5, Allen teaches an article for burial beneath the root zone of a plant or plants (Allen Fig. 1 #12) comprising a flexible water resistant sheet having a plurality of contiguous concave reservoir basins (Allen Fig. 1 #18) with through holes (Allen Fig. 1 #22) disposed upon the crests of basin walls separating such basins.

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,460,867 to Magnuson et al.

Regarding Claim 5, Magnuson teaches an article for burial beneath the root zone of a plant or plants (Magnuson Fig. 1 #10 and Fig. 2 #16) comprising a flexible water resistant sheet having a plurality of contiguous concave reservoir basins (Magnuson #14) with through holes (Magnuson Col. 2 Line 57-59) disposed upon the crests of basin walls separating such basins.

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,385,903 to Diller et al.

Regarding Claim 5, Diller teaches an article for burial beneath the root zone of a plant or plants (Diller element 49 is buried under its contents which is soil and plant roots and further more the device is capable of being buried completely in the ground) comprising a flexible water resistant sheet having a plurality of contiguous concave reservoir basins (Diller Fig. 4 and Fig. 3 #49) with through holes (Diller Fig. 3 #42) disposed upon the crests of basin walls separating such basins.

#### ***Response to Arguments***

Applicant's arguments filed 23 December 2004 have been fully considered but they are not persuasive. Applicant argued that his invention does not have a filter fabric wicking material, nor placement against a water impenetrable membrane that Steinbronn includes. However, Examiner maintains that Steinbronn teaches each and every structural limitation and function claimed by applicant. Merely eliminating an

element does not provide a patentable distinction over the cited prior art, this would merely be an obvious modification for one of ordinary skill in the art.

Applicant has not positively claimed that the entire sheet is buried beneath the ground. The current wording of applicant's claim implies that the device must only be capable of being buried under a root zone not even completely under ground. Therefore, examiner has presented that Diller et al teaches each and every claimed limitation.

Applicant's claim language should contain structural features that are structurally different then those presented in the cited prior art. The current structural features presented in claim 5 are all taught by the cited prior art. The examiner does not have any recommendations or constructive assistance at this time of allowable subject matter per the request pursuant to MPEP 2173.02 and MPEP 707.07 (j).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600